



PATENT
Customer No. 22,852
Attorney Docket No. 05725.0981-00

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)
)
Daniela GIACCHETTI et al.) Group Art Unit: 3629
)
Application No.: 10/024,620) Examiner: Borissov, Igor N.
)
Filed: December 21, 2001)
)
For: VIRTUAL BEAUTY) Confirmation No.: 3957
CONSULTANT)

Mail Stop Appeal Brief--Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 41.37)

Transmitted herewith is the APPEAL BRIEF in this application with respect to the
Notice of Appeal filed on April 1, 2005.

This application is on behalf of

☐ Small Entity ☒ Large Entity

Pursuant to 37 C.F.R. 41.20(b)(2), the fee for filing the Appeal Brief is:

☐ \$250.00 (Small Entity)

☒ \$500.00 (Large Entity)

TOTAL FEE DUE:

| | |
|------------------------|------------|
| Notice of Appeal Fee | \$ |
| Extension Fee (if any) | \$1,590.00 |
| Total Fee Due | \$2,090.00 |

☒ Enclosed is a check for \$2,090.00 to cover the above fees.

PETITION FOR EXTENSION. If any extension of time is necessary for the filing of this Appeal Brief, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to our Deposit Account No. 06-0916. A duplicate copy of this paper is enclosed for use in charging the deposit account.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 3, 2005

By: 
Frank A. Italiano
Reg. No. 53,056



PATENT
Customer No. 22,852
Attorney Docket No. 05725.0981-00000

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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For: VIRTUAL BEAUTY CONSULTANT) Confirmation No.: 3957

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal filed April 1, 2005, and pursuant to 37 C.F.R. § 41.37, Appellants submit this Appeal Brief and enclose herewith a check for the fee of \$500.00 required under 37 C.F.R. § 41.20(b)(2). The period for filing this brief has been extended to October 3, 2005 (October 1, 2005, being a Saturday), by the accompanying Petition of Extension of Time of four (4) months and appropriate fee payment.

This appeal responds to the final Office Action mailed December 1, 2004 ("Final Office Action"), finally rejecting claims 1-48, which are set forth in attached Appendix A.

If any additional fees are required or if the enclosed payment is insufficient,

Appellants request that the required fees be charged to Deposit Account No. 06-0916.

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I. Real Party In Interest

The real party in interest is L'Oréal S.A., the assignee of the entire right, title, and interest in the application, as indicated by assignment duly recorded in the U.S. Patent and Trademark Office, beginning at Real 012941, Frame 0092, on May 30, 2002.

II. Related Appeals and Interferences

There are currently no other appeals or interferences, of which Appellants, Appellants' legal representative, or Assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status Of Claims

Claims 1-48 are pending in this application. Claims 1-48, as set forth in Appendix A, have been finally rejected in the Final Office Action. The rejection applied to claims 1-48 is at issue in this appeal.

IV. Status Of Amendments

No amendments under 37 C.F.R. § 1.116 have been filed subsequent or in response to the Final Office Action.

V. Summary Of Claimed Subject Matter At Issue

Consistent with the invention, as set forth in independent claim 1, an electronic beauty analysis method is provided. The method involves maintaining beauty information (Fig. 3: 300) in a data structure (e.g., Fig. 6: 611).¹ The method also involves receiving personal information about a subject (Fig. 3: 302) and selecting for presentation to the subject at least some beauty information (Fig. 3: 304; Fig. 6: 612) maintained in the data structure based on the received information. The method additionally involves presenting to the subject an image of a virtual beauty consultant (e.g., Figs. 1, 2: item 100; Fig. 3: 306) and causing the image of the consultant to present to the subject the beauty information selected for presentation (Fig. 3: 308). *See, e.g.,* Appellants' specification: page 6, ¶ 21; page 7, ¶ 23 - page 13, ¶ 37; page 14, ¶¶ 41 - 43; page 16, ¶¶ 47, 48; Fig. 8 and accompanying text.

Consistent with the invention, as set forth in dependent claim 15, an electronic beauty analysis method is provided in which a pre-recorded image of an actual human being is displayed to the subject (*see, e.g.,* specification: page 10, ¶ 31 - page 11, ¶ 32; pages 12-13, ¶ 37; page 18, ¶ 56).

Consistent with the invention, as set forth in dependent claim 20, an electronic beauty analysis method is provided in which an image of a virtual user receiving the beauty information is presented to the subject (*see, e.g.,* specification: pages 12-13, ¶ 37). Consistent with the invention, as set forth in dependent claim 21, an electronic

¹ In referring to the specification and drawings, Appellants do not intend to limit the scope of the claims to the exemplary embodiments described in the specification and shown in the drawings. Rather, Appellants expressly affirm their entitlement to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

beauty analysis method is provided in which the image of the virtual user is a representation of the subject (see, e.g., specification: pages 12-13, ¶ 37).

Consistent with the invention, as set forth in dependent claim 44, an electronic beauty analysis method is provided in which presenting to the subject an image of a virtual beauty consultant includes automatically selecting an image of the virtual beauty consultant based on characteristics of the subject (see, e.g., specification: page 11, ¶ 33 - page 12, ¶ 36).

Consistent with the invention, as set forth in dependent claim 45, an electronic beauty analysis method is provided in which automatically selecting an image of the virtual beauty consultant based on characteristics of the subject includes automatically selecting an image of the virtual beauty consultant based on characteristics determined from the received personal information (see, e.g., specification: page 11, ¶ 33).

Consistent with the invention, as set forth in dependent claim 46, an electronic beauty analysis method is provided in which automatically selecting an image of the virtual beauty consultant based on characteristics of the subject includes automatically selecting an image of the virtual beauty consultant based on characteristics determined from habits of the subject (see, e.g., specification: page 11, ¶ 33).

Consistent with the invention, as set forth in dependent claim 47, an electronic beauty analysis method is provided in which presenting to the subject an image of a virtual beauty consultant includes presenting the image of the virtual beauty consultant in a customizable environment (see, e.g., specification: page 11, ¶ 34 - page 12, ¶ 36).

Consistent with the invention, as set forth in dependent claim 48, an electronic beauty analysis method is provided that comprises presenting to the subject a

personification of the subject, wherein the personification of the subject receives the selected information from the virtual beauty consultant (*see, e.g., specification: pages 12-13, ¶ 37*).

Consistent with the invention, as set forth in independent claim 22, an electronic beauty guidance method is provided. The method involves storing a series of beauty related queries (*see, e.g., specification: page 7, ¶ 24; page 9, ¶ 29; Fig. 1*) in a data structure (*see, e.g., specification: page 14, ¶ 41; Fig. 6*). The method also involves establishing an interface with a subject for enabling the subject to participate in an interactive beauty analysis (*see, e.g., specification: page 15, ¶ 44 - page 16, ¶ 48; Figs. 5-7*). In addition, the method involves presenting to the subject a human image (*e.g., Fig. 1: 100*) via a display device (*e.g., Fig. 1: 104; Fig. 7: 704*) accessed by the subject and causing the human image to appear as audibly (*e.g., Fig. 1: 109; Fig. 7: 716*) presenting to the subject at least one of the queries from the data structure (*e.g., Fig. 6: 611*), to thereby conduct the interactive beauty analysis with the subject (*see, e.g., specification: page 18, ¶ 56 - page 21, ¶ 61*).

Consistent with the invention, as set forth in dependent claim 26, an electronic beauty guidance method is provided in which the human image is a pre-recorded image of an actual human being (*see, e.g., specification: page 10, ¶ 31 - page 11, ¶ 32; pages 12-13, ¶ 37; page 18, ¶ 56*).

Consistent with the invention, as set forth in dependent claim 31, an electronic beauty guidance method is provided in which an image of a virtual user receiving the beauty information is presented to the subject (*see, e.g., specification: pages 12-13, ¶ 37*). Consistent with the invention, as set forth in dependent claim 32, an electronic

beauty guidance method is provided in which the image of the virtual user is a representation of the subject (see, e.g., specification: pages 12-13, ¶ 37).

Consistent with the invention, as set forth in independent claim 33, an electronic beauty consulting system is provided. The system comprises a data structure (e.g., Fig. 6: 611) for storing a series of beauty queries (see, e.g., specification: page 7, ¶ 24; page 9, ¶ 29; Fig. 1). The system further comprises a user terminal (e.g., Fig. 5: 501; Fig. 7 and accompanying text) for enabling a subject to seek beauty advice (e.g., specification: page 8, ¶ 25; page 17, ¶¶ 52-54), the terminal being linked (see Fig. 5: 502) to the data structure. The system additionally comprises a module (e.g., Fig. 6: 612; see, e.g., specification: page 18, ¶ 56 - page 21, ¶ 61) configured to cause a human image (e.g., Fig. 1: 100) to appear to the subject through the terminal in a manner projecting an appearance that the human image asks at least one query from the data structure to the subject.

Consistent with the invention, as set forth in dependent claim 42, the module is also configured to cause a second human image to appear to the subject through the terminal in a manner projecting an appearance that the second human image answers the at least one query (see, e.g., specification: pages 12-13, ¶ 37). Consistent with the invention, as set forth in dependent claim 43, the second human image is a representation of the subject (see, e.g., specification: pages 12-13, ¶ 37).

VI. Grounds of Rejection

The following ground of rejection is to be reviewed:

Claims 1-48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over PCT International Publication No. WO 01/18674 A2 ("*Maloney*") in view of U.S. Patent Application Publication No. 2002/0007276 A1 ("*Rosenblatt*").

VII. Argument

Each claim of the present application is separately patentable, and upon issuance of a patent will be entitled to a separate presumption of validity under 35 U.S.C. § 282. The arguments set forth below are arranged under subheadings, and in accordance with 37 C.F.R. § 41.37(c)(1)(vii), these subheadings indicate the claims whose patentabilities are argued separately.

A. The rejection of claims 1-48 under 35 U.S.C. § 103(a) based on *Maloney* and *Rosenblatt* should be reversed because a case for *prima facie* obviousness has not been established

To establish *prima facie* obviousness under 35 U.S.C. § 103(a), the Examiner must show first that the prior art references teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Second, the Examiner must show that there is some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references in a manner resulting in the claimed invention. *In re Rouffet*, 149 F.3d 1350, 47 USPQ2d 1453 (Fed. Cir. 1998). Third, the Examiner must show that there is a reasonable expectation of success to modify or combine. *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). Moreover, “[b]oth the suggestion and the reasonable expectation of success must be found in the prior art reference, not in the Applicant’s disclosure.” *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

In this case, the rejection of claims 1-48 under 35 U.S.C. § 103(a) should be reversed at least because (1) neither *Maloney* nor *Rosenblatt*, nor any combination thereof, teaches or suggests all of the features recited in the claims; and (2) a proper

motivation to combine or modify the cited references in a manner resulting in Appellants' claimed invention is lacking.

1. Claims 1-14 and 16-19

a) Neither *Maloney* nor *Rosenblatt*, nor any combination thereof, teaches or suggests each and every feature recited in independent claim 1

Maloney fails to teach or suggest at least “presenting to the subject an image of a virtual beauty consultant” and “causing the image of the consultant to present to the subject the beauty information selected for presentation,” as recited in claim 1. *Maloney* is directed to providing a customized product to a consumer (Abstract). *Maloney* does not teach or suggest presenting an image of a virtual consultant, as affirmed by the Examiner (see Final Office Action at 3), much less causing the image of the consultant to present selected beauty information, as claimed.

The Examiner has not established that *Rosenblatt* cures *Maloney*'s deficiencies. *Rosenblatt* discloses “virtual representatives” for use in “customer-support applications for Web retailers or service providers, as well as interpersonal email and chat” (§ 0007). *Rosenblatt* discloses that the virtual representatives can be used as “guides, corporate spokespersons, teachers, entertainers, game characters, persona avatars, advertising personalities, and individual sales help” (§ 0041). Although *Rosenblatt* mentions virtual representatives for use in a variety of settings, the reference does not teach or suggest “presenting to the subject an image of a virtual beauty consultant” and “causing the image of the consultant to present to the subject the beauty information selected for presentation,” as claimed. Even if *Rosenblatt*'s “virtual representative” were construed

as a virtual “consultant,” *Rosenblatt* does not disclose or suggest causing the virtual representative to present beauty information selected for presentation, as claimed.

Additionally, the Final Office Action fails to show that claim 1, as a whole, including the “presenting” and “causing” subject matter would have been obvious. Indeed, the allegations in the Office Action that *Maloney* and *Rosenblatt* teach certain subject matter do not suffice to establish a *prima facie* conclusion of obviousness.

Because the Examiner failed to establish that the applied art discloses or suggests all of the features of claim 1, at least one of the essential criteria for establishing a *prima facie* case of obviousness is lacking. For at least this reason, the § 103(a) rejection of claim 1 based on *Maloney* and *Rosenblatt* cannot be sustained.

b) The Examiner failed to establish that a skilled artisan would have combined *Maloney* and *Rosenblatt* in a manner resulting in the invention defined by claim 1

Regardless of whether the features of claim 1 can be found in some combination of *Maloney* and *Rosenblatt*, a case for *prima facie* obviousness has not been established at least because the requisite motivation to combine or modify the references is lacking. The Federal Circuit has opined that “virtually all [inventions] are combinations of old elements.” *See e.g., In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998) (citations omitted). The Federal Circuit has explained that an examiner may find every element of a claimed invention in the prior art but mere identification is not sufficient to negate patentability. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). The court explained that “the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select

the elements from the cited prior art references for combination in the manner claimed.”

Id.

Appellants note that determinations of obviousness must be supported by evidence on the record. *See In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001), 59 USPQ2d 1693, 1696-98 (finding that the factual determinations central to the issue of patentability, including conclusions of obviousness by the Board, must be supported by “substantial evidence”). The desire to combine or modify references must be proved with “substantial evidence” that is a result of a “thorough and searching” factual inquiry. *See In re Lee*, 277 F.3d 1338, 1343-1344 (Fed. Cir. 2002), 61 USPQ2d 1430, 1433 (quoting *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52). Also, the Federal Circuit has clearly stated that the evidence of a motivation or suggestion to modify a reference must be “clear and particular.” *In re Dembicziak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

In this case, the Final Office Action does not show, by “clear and particular” evidence, that a skilled artisan considering *Maloney* and *Rosenblatt*, and not having the benefit of Appellants’ disclosure, would have been motivated to combine or modify the references in a manner resulting in Appellants’ claimed invention. Instead, the Final Office Action merely identifies certain teachings of the cited references without showing reasons that a skilled artisan would select or modify those elements in the manner claimed.

The Examiner noted *Maloney*’s disclosure that “an image of the consumer is displayed and the consumer can make product selections and the virtual results are displayed on the image of the consumer.” Final Office Action at 3, 6 (citing *Maloney*,

page 20, lines 27-29). The Examiner alleged that a skilled artisan would have modified *Maloney* in view of *Rosenblatt* such that *Maloney's* displayed image of the consumer "is an image of a virtual beauty consultant," as allegedly disclosed by *Rosenblatt*. *Id.* at 3. According to the Examiner, the alleged modification "would advantageously attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially [increasing] . . . revenue." *Id.* at 3, 6.

These conclusory statements in the Final Office Action are not properly supported by facts on the record and do not evidence that a skilled artisan would have been motivated to modify the references in a manner resulting in Appellants' claimed combination. The Examiner failed to supply any reasoning to show that a skilled artisan would have replaced *Maloney's* consumer image with *Rosenblatt's* "virtual representative." In *Maloney's* system, virtual results are displayed on the consumer image. The Examiner failed to provide a motivation for altering *Maloney's* system so that virtual results are displayed on a virtual representative instead of the consumer. Indeed, the proposed modification would render *Maloney's* system unsatisfactory for its intended purpose, indicating a lack of motivation. *See In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). That is, replacing *Maloney's* consumer image with a virtual representative would render the system unsatisfactory for its intended purpose of depicting "how the products will look on the consumer." *Maloney*, page 20, lines 29-30. Furthermore, the Examiner failed to show that a skilled artisan would have been motivated to display *Rosenblatt's* virtual representative along with *Maloney's* consumer image.

In addition, the Examiner failed to provide any evidence on the record, beyond conjecture, to show that replacing *Maloney's* consumer image with *Rosenblatt's* virtual representative would "advantageously attract" certain customers or increase "revenue," as alleged in the Final Office Action at page 3. Indeed, the Examiner failed to show that either of the relied-upon references suggests combining their teachings.

Simply because references can be combined or modified does not render their combination obvious unless the references also suggest the desirability of the modification. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). The Examiner can satisfy the burden of establishing a *prima facie* case of obviousness "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to [modify or] combine the relevant teachings of the references." *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) (citations omitted) (emphasis added). The Federal Circuit has reaffirmed the Examiner's high burden associated with establishing a *prima facie* case of obviousness and has emphasized the requirement of specificity. *See In re Sang-Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002). In this case, the Examiner failed to show with the required specificity that the cited art "suggests the desirability of the" combination.

Appellants submit that the conclusions in the Final Office Action were not reached based on facts gleaned from the cited references and that, instead, teachings of the present application were improperly used in hindsight to reconstruct the prior art. While *Maloney* mentions providing a customized product to a consumer and *Rosenblatt*

describes virtual representatives, neither of the references teaches or suggests combining or modifying their respective teachings as alleged in the Office Action.

Appellants note that “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. M.P.E.P. § 2141.02 (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)). The Examiner has not shown that claim 1, as a whole, would have been obvious in view of *Maloney* and *Rosenblatt*. The conjectural conclusions set forth in the Office Action do not suffice to establish a *prima facie* conclusion of obviousness.

For at least the foregoing reasons, *prima facie* obviousness has not been established with respect to claim 1. The § 103(a) rejection of that claim should therefore be reversed. The § 103(a) rejection of claims 2-14 and 16-19 should be reversed as well, at least because these claims depend upon claim 1. See, *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

2. Claim 15

The § 103(a) rejection of dependent claim 15 should be reversed for at least reasons similar to those presented above in connection with base claim 1 and, further, for the following additional reasons.

Claim 15 recites, *inter alia*, that “presenting to the subject an image of a virtual beauty consultant involves causing a pre-recorded image of an actual human being to be displayed to the subject.” The Final Office Action does not establish that *Maloney* or

Rosenblatt teaches or suggests this feature. The Examiner noted *Maloney's* disclosure that "an image of the consumer is displayed and . . . and the virtual results are displayed on the image of the consumer." Final Office Action at 4 (citing *Maloney*, page 20, lines 27-29). The Examiner further noted that *Maloney* discloses a "test kit" comprising "a device to acquire a photographic image of the consumer." *Id.* at 4 (citing *Maloney*, page 36, claim 20).

Although *Maloney* mentions displaying an image of a consumer, which could presumably be obtained by the device supplied in the test kit, *Maloney* merely discloses displaying virtual results in the image, not using the image as a "virtual beauty consultant." Appellants again note that "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. M.P.E.P. § 2141.02 (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)). In this case, the Examiner noted *Maloney's* disclosure of displaying an image of a consumer but failed to show that claim 15, as a whole, including the "virtual beauty consultant" subject matter would have been obvious.

Rosenblatt fails to cure *Maloney's* deficiencies. Although *Rosenblatt* discloses customizing a "standard virtual representative" using a "two-dimensional representation" of a consumer, the reference does not teach or suggest "causing a pre-recorded image of an actual human being to be displayed to the subject," as recited in claim 15.

Rosenblatt, ¶ 0042-0045. *Rosenblatt's* system scans a user's photograph and creates

“three-dimensional geometry for the user-submitted image.” *Id.* at ¶ 0044. Creating geometry for an image does not constitute causing a pre-recorded image of an actual human being to be displayed. Indeed, *Rosenblatt* fails to disclose or suggest the claimed “causing” of claim 15.

Because the Examiner failed to establish that the applied art discloses or suggests all of the features of claim 15, at least one of the essential criteria for establishing a *prima facie* case of obviousness is lacking. For at least this reason, the § 103(a) rejection of claim 15 cannot be sustained.

3. Claims 20 and 21

The § 103(a) rejection of dependent claims 20 and 21 should be reversed for at least reasons similar to those presented above in connection with base claim 1. Further, the § 103(a) rejection of claims 20 and 21 should be reversed for the following additional reasons.

a) Neither *Maloney* nor *Rosenblatt*, nor any combination thereof, teaches or suggests each and every feature recited in claim 20

Claim 20 recites, *inter alia*, “presenting to the subject an image of a virtual user receiving the beauty information.” In rejecting claim 20, the Examiner again noted *Maloney*’s disclosure that “an image of the consumer is displayed and . . . and the virtual results are displayed on the image of the consumer.” Final Office Action at 4 (citing *Maloney*, page 20, lines 27-29). The Examiner further alleged that *Rosenblatt* discloses “a three-dimensional, photo-realistic, voice-enable computer animation of a human head serving as a ‘virtual representative’ (user).” *Id.*

The Final Office Action does not establish that *Maloney* or *Rosenblatt* teaches or suggests the “presenting” feature of claim 20. Although *Maloney* discloses displaying an image of a consumer, the reference does not teach or suggest “presenting to the subject an image of a virtual user receiving the beauty information [presented by a virtual beauty consultant],” as recited in claim 20. *Maloney* merely mentions that virtual results are displayed on the consumer image, the reference does not disclose that the image receives beauty information. Further, *Maloney* fails to disclose a virtual beauty consultant, let alone a virtual user receiving beauty information from such a consultant.

Rosenblatt does not cure *Maloney*’s deficiencies. *Rosenblatt* does not disclose or suggest at least “presenting to the subject an image of a virtual user receiving the beauty information [presented by a virtual beauty consultant],” as recited in claim 20. Even if *Rosenblatt* were to disclose a “computer animation of a human head serving as a ‘virtual representative,’” the reference does not disclose presenting an image of a virtual user receiving beauty information from that computer animation. The Examiner appears to construe *Rosenblatt* as disclosing that the “virtual representative” serves as a “user.” See Final Office Action at 4. Appellants disagree with this interpretation. *Rosenblatt* discloses that the virtual representatives can be used as “guides, corporate spokespersons, teachers, entertainers, game characters, persona avatars, advertising personalities, and individual sales help” (¶ 0041). *Rosenblatt* does not disclose or suggest using a virtual representative as a “virtual user receiving the beauty information [presented by a virtual beauty consultant],” as claimed.

The Examiner alleged that a skilled artisan would have modified *Maloney* such that the displayed image of the consumer “is an image of a human head serving as a

'virtual representative' (user)," as allegedly disclosed by *Rosenblatt*. Final Office Action at 4. As explained above, *Rosenblatt* does not disclose or suggest using a virtual representative as a "virtual user receiving the beauty information," as claimed. Accordingly, replacing *Maloney's* consumer image with *Rosenblatt's* virtual representative would not yield all of the features of claim 20. That is, displaying a virtual representative in place of a user would not result in "presenting to the subject an image of a virtual user receiving the beauty information [presented by a virtual beauty consultant]," as recited in claim 20. Further, as noted above in connection with claim 1, replacing *Maloney's* consumer image with a virtual representative would render *Maloney's* system unsatisfactory for the intended purpose of depicting "how the products will look on the consumer." *Maloney*, page 20, lines 29-30. Because the Examiner failed to establish that the applied art discloses or suggests all of the features of claim 20, *prima facie* obviousness has not been established. As such, the § 103(a) rejection of claim 20 cannot be sustained.

b) The Examiner failed to establish that a skilled artisan would have combined *Maloney* and *Rosenblatt* in a manner resulting in the invention defined by claim 20

A case for *prima facie* obviousness has not been established with respect to claim 20 at least because the requisite motivation to combine or modify the references is lacking. According to the Examiner, the alleged modification of *Maloney* "would advantageously attract to e-shopping those customers who prefer to see the actual results of the use of cosmetic products, thereby potentially [increasing] . . . revenue." Final Office Action at 4-5, 6-7. These conclusory statements in the Final Office Action are not properly supported by facts on the record and do not evidence that a skilled

artisan would have been motivated to modify the references in a manner resulting in Appellants' claimed combination. The Examiner failed to supply any reasoning to show that a skilled artisan would have replaced *Maloney's* consumer image with *Rosenblatt's* "virtual representative." The Examiner also failed to show how such a modification would allow consumers "to see the actual results of the use of cosmetic products." *Maloney's* system already depicts "how the products will look on the consumer," and the Examiner failed to provide any objective reason for the alleged modification. *Maloney*, page 20, lines 29-30. In addition, the Examiner failed to show how the alleged modification would "increase revenue," especially since *Maloney's* system already depicts "how the products will look on the consumer."

The Final Office Action does not show, by "clear and particular" evidence, that a skilled artisan considering *Maloney* and *Rosenblatt*, and not having the benefit of Appellants' disclosure, would have been motivated to combine or modify the references in a manner resulting in Appellants' claimed invention. Instead, the Final Office Action merely identifies certain teachings of the cited references without showing reasons that a skilled artisan would select or modify those elements in the manner claimed.

Appellants note again that simply because references can be combined or modified does not render their combination obvious unless the references also suggest the desirability of the modification. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). The Final Office Action fails to show with the required specificity that the cited art "suggests the desirability of the" combination.

Appellants submit that the conclusions in the Final Office Action were not reached based on facts gleaned from the cited references and that, instead, teachings

of the present application were improperly used in hindsight to reconstruct the prior art. While *Maloney* mentions displaying virtual results on an image of a consumer and *Rosenblatt* describes a virtual representatives, neither of the references teaches or suggests combining or modifying their respective teachings as alleged in the Office Action.

Because the requisite motivation to combine or modify *Maloney* and *Rosenblatt* is lacking and since, even if the references were combined or modified, the Final Office Action fails to show that the result would yield all of the features of claim 20, *prima facie* obviousness has not been established. As such, the § 103(a) rejection of claim 20 should be reversed. The § 103(a) rejection of claim 21 should be reversed as well, at least because this claim depends upon claim 20. See, *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

4. Claims 44-46

The § 103(a) rejection of dependent claims 44-48 should be reversed for at least reasons similar to those presented above in connection with base claim 1 and, further, for the following additional reasons.

Claim 44 recites, *inter alia*, that “presenting to the subject an image of a virtual beauty consultant includes automatically selecting an image of the virtual beauty consultant based on characteristics of the subject.” The Final Office Action does not establish that *Maloney* or *Rosenblatt* teaches or suggests the “presenting” feature of claim 44.

In rejecting claim 44, the Examiner alleged that *Maloney* discloses “selecting and presenting to the subject an image of the consumer to display virtual results of the

selected product . . . thereby obviously indicating 'automatic' mode." Final Office Action at 5. Appellants disagree with the Examiner's interpretation of *Maloney*. The cited portion of *Maloney* (page 20, lines 27-29) discloses that "an image of the customer is displayed and the consumer can make product selections and the virtual results are displayed on the image of the consumer." This disclosure does not support the Examiner's allegations. Displaying virtual results of selected products on an image of a consumer, as disclosed by *Maloney*, does not teach or suggest automatically selecting an image of a virtual beauty consultant based on characteristics of the subject and presenting that image to the subject, as claimed. Additionally, even if *Maloney's* "image of the consumer" were automatically "selected" based on characteristics of the subject, to which Appellants do not acquiesce, *Maloney's* "image of the consumer" does not serve as a "virtual beauty consultant." In fact, the Examiner conceded that *Maloney* does not disclose presenting to the subject an image of a virtual beauty consultant.

Rosenblatt does not cure *Maloney's* deficiencies. Although *Rosenblatt* discloses that a user can select a virtual representative from a standard set of virtual representative (see, e.g., ¶ 0008), the reference does not teach or suggest "automatically selecting an image of the virtual beauty consultant based on characteristics of the subject," as claimed.

Because the Examiner failed to establish that the applied art discloses or suggests all of the features of claim 44, *prima facie* obviousness has not been established. As such, the § 103(a) rejection of claim 44 should be reversed. The § 103(a) rejection of claims 45 and 46 should be reversed as well, at least because these claims depend upon claim 44.

Moreover, the § 103(a) rejection of claims 45 and 46 should be reversed because the cited art fails to teach or suggest the additional features recited in claims 45 and 46. Neither *Maloney* nor *Rosenblatt*, nor any combination thereof, teaches or suggests “automatically selecting an image of the virtual beauty consultant based on characteristics determined from the received personal information” or “automatically selecting an image of the virtual beauty consultant based on characteristics determined from habits of the subject,” as recited in claims 45 and 46 respectively.

5. Claim 47

The § 103(a) rejection of dependent claim 47 should be reversed for at least reasons similar to those presented above in connection with base claim 1 and, further, for the following additional reasons.

Claim 47 recites, *inter alia*, that “presenting to the subject an image of a virtual beauty consultant includes presenting the image of the virtual beauty consultant in a customizable environment.” The Final Office Action does not establish that *Maloney* or *Rosenblatt* teaches or suggests the “presenting” feature of claim 47.

In rejecting claim 47, the Examiner noted *Maloney*’s disclosure of “a customized user interface for providing a customized product combination.” Final Office Action at 5 (citing *Maloney*, page 16, lines 19-20). Appellants disagree with the Examiner’s interpretation of *Maloney*. According to *Maloney* (page 3), the “customized user interface comprises information pages which are customized to correlate to the psychological and physiological information of the consumer.” *Maloney*’s customizable interface does not teach or suggest presenting the image of the virtual beauty consultant in a customizable environment, as recited in claim 47. That is, providing

customized information pages is not the same as presenting a virtual beauty consultant in a customizable environment (e.g., a beach, an office setting, etc.). *Maloney* does not disclose presenting an image of a virtual beauty consultant, as affirmed by the Examiner, much less presenting the virtual beauty consultant in a customizable environment, as claimed.

Rosenblatt fails to cure *Maloney*'s deficiencies. Although *Rosenblatt* discloses creating various representatives and a "customized model" (§ 0045), the reference does not teach or suggest "presenting the image of the virtual beauty consultant in a customizable environment" (emphasis added). Because the Final Office Action failed to establish that the applied art discloses or suggests all of the features of claim 47, *prima facie* obviousness has not been established. As such, the § 103(a) rejection of claim 47 should be reversed.

6. Claim 48

The § 103(a) rejection of dependent claim 48 should be reversed for at least reasons similar to those presented above in connection with base claim 1 and, further, for the following additional reasons.

Claim 48 recites, *inter alia*, "presenting to the subject a personification of the subject, wherein the personification of the subject receives the selected information from the virtual beauty consultant." The Final Office Action does not establish that *Maloney* or *Rosenblatt* teaches or suggests the "presenting" feature of claim 48. Although *Maloney* mentions displaying virtual results of product selections on an "image of the customer," the reference does not teach or suggest that the "image of the customer" receives selected information from the virtual beauty consultant, as required

by claim 48. *Maloney*, page 20, lines 27-29. In addition, although *Rosenblatt* discloses “virtual representatives,” the reference does not disclose or suggest using a virtual representative as a “personification of the subject [that] receives the selected information from the virtual beauty consultant,” as claimed. Indeed, neither *Maloney* nor *Rosenblatt*, nor any combination thereof, teaches or suggests “presenting to the subject a personification of the subject, wherein the personification of the subject receives the selected information from the virtual beauty consultant,” as recited in claim 48.

Because the Final Office Action failed to establish that the applied art discloses or suggests all of the features of claim 48, *prima facie* obviousness has not been established. The § 103(a) rejection of claim 48 should therefore be reversed.

7. Claims 22-25 and 27-30

The rejection of claims 22-35 and 27-30 under 35 U.S.C. § 103(a) should be reversed for at least the following reasons.

a) Neither *Maloney* nor *Rosenblatt*, nor any combination thereof, teaches or suggests each and every feature recited in independent claim 22

Claim 22 recites a combination including “causing [a] . . . human image to appear as audibly presenting to the subject at least one of the queries from the data structure, to thereby conduct the interactive beauty analysis with the subject.” The Examiner rejected independent claim 22 for the same reasons set forth for claim 1. The Final Office Action does not establish that *Maloney* or *Rosenblatt* teaches or suggests the “causing” feature of claim 22.

Although *Maloney* discloses displaying an “image of the customer” (page 20, lines 27-29), the reference does not teach or suggest causing that image “to appear as

audibly presenting to the subject at least one of the queries from the data structure, to thereby conduct the interactive beauty analysis with the subject,” as recited in claim 22. Instead, *Maloney* merely discloses (page 20, lines 27-29) that “virtual results are displayed on the image of the consumer.”

Rosenblatt does not cure *Maloney*’s deficiencies. Although *Rosenblatt* mentions virtual representatives for use in a variety of settings, the reference does not teach or suggest causing a virtual representative “to appear as audibly presenting to the subject at least one of the queries from the data structure, to thereby conduct the interactive beauty analysis with the subject,” as recited in claim 22.

Moreover, the Examiner has not shown that claim 22, as a whole, would have been obvious in view of *Maloney* and *Rosenblatt*. The conjectural conclusions set forth in the Office Action do not suffice to establish a *prima facie* conclusion of obviousness.

Because the Final Office Action failed to establish that the applied art discloses or suggests all of the features of claim 22, *prima facie* obviousness has not been established. The § 103(a) rejection of claim 22 should therefore be reversed.

b) The Examiner failed to establish that a skilled artisan would have combined *Maloney* and *Rosenblatt* in a manner resulting in the invention defined by claim 22

Regardless of whether the features of claim 22 can be found in some combination of *Maloney* and *Rosenblatt*, a case for *prima facie* obviousness has not been established at least because the requisite motivation to combine or modify the cited references is lacking. The Examiner alleged that a skilled artisan would have modified *Maloney* in view of *Rosenblatt* such that *Maloney*’s displayed image of the consumer “is an image of a virtual beauty consultant,” as allegedly disclosed by

Rosenblatt. Final Office Action at 3. According to the Examiner, the alleged modification “would advantageously attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially [increasing] . . . revenue.” *Id.* at 3, 6. Although claim 22 is of different scope than claim 1, the requisite motivation to combine or modify *Maloney* and *Rosenblatt* is lacking for at least reasons similar to those presented above in connection with claim 1.

For at least the foregoing reasons, *prima facie* obviousness has not been established with respect to claim 22 and the § 103(a) rejection of that claim should be reversed. The § 103(a) rejection of claims 23-25 and 27-30 should be reversed as well, at least because these claims depend upon claim 22. *See, In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

8. Claim 26

Dependent claim 26 recites, *inter alia*, “wherein the human image is a pre-recorded image of an actual human being.” The § 103(a) rejection of claim 26 should be reversed for at least reasons similar to those presented above in connection with its base claim 22. Further, although claim 26 is of different scope than claim 15, the § 103(a) rejection of claim 26 should be reversed for at least reasons similar to those presented above in connection with claim 15.

9. Claims 31 and 32

Dependent claim 31 recites, *inter alia*, “presenting to the subject an image of a virtual user receiving the beauty information.” The § 103(a) rejection of claim 31 should be reversed for at least reasons similar to those presented above in connection with its base claim 22. Also, although claim 31 is of different scope than claim 20, the § 103(a)

rejection of claim 31 should be reversed for at least reasons similar to those presented above in connection with claim 20. In addition, the § 103(a) rejection of claim 32 should be reversed, at least because this claim depends upon claim 31.

10. Claims 33-41

The rejection of claims 33-41 under 35 U.S.C. § 103(a) should be reversed for at least the following reasons.

a) Neither *Maloney* nor *Rosenblatt*, nor any combination thereof, teaches or suggests each and every feature recited in independent claim 33

Claim 33 recites a combination including “a module configured to cause a human image to appear to the subject through the terminal in a manner projecting an appearance that the human image asks at least one query from the data structure to the subject.” The Examiner rejected independent claim 33 for the same reasons set forth for claims 1 and 22. The Final Office Action does not establish that *Maloney* or *Rosenblatt* teaches or suggests the “module” recited in claim 33.

Although *Maloney* discloses displaying an “image of the customer” (page 20, lines 27-29), the reference does not teach or suggest causing that image “to appear to the subject through the terminal in a manner projecting an appearance that the human image asks at least one query from the data structure to the subject,” as recited in claim 33. Instead, *Maloney* merely discloses (page 20, lines 27-29) that “virtual results are displayed on the image of the consumer.”

Rosenblatt does not cure *Maloney*'s deficiencies. Although *Rosenblatt* mentions virtual representatives for use in a variety of settings, the reference does not teach or suggest causing a virtual representative “to appear to the subject through the terminal in

a manner projecting an appearance that the human image asks at least one query from the data structure to the subject,” as recited in claim 33.

Moreover, the Examiner has not shown that claim 33, as a whole, would have been obvious in view of *Maloney* and *Rosenblatt*. The conjectural conclusions set forth in the Office Action do not suffice to establish a *prima facie* conclusion of obviousness.

Because the Final Office Action failed to establish that the applied art discloses or suggests all of the features of claim 33, *prima facie* obviousness has not been established. The § 103(a) rejection of claim 33 should therefore be reversed.

b) The Examiner failed to establish that a skilled artisan would have combined *Maloney* and *Rosenblatt* in a manner resulting in the invention defined by claim 33

A case for *prima facie* obviousness has not been established with respect to claim 33 at least because the requisite motivation to combine or modify the cited references is lacking. The Examiner alleged that a skilled artisan would have modified *Maloney* in view of *Rosenblatt* such that *Maloney*'s displayed image of the consumer “is an image of a virtual beauty consultant,” as allegedly disclose by *Rosenblatt*. Final Office Action at 3. According to the Examiner, the alleged modification “would advantageously attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially [increasing] . . . revenue.” *Id.* at 3, 6. Although claim 33 is of different scope than claim 1, the requisite motivation to combine or modify *Maloney* and *Rosenblatt* is lacking for at least reasons similar to those presented above in connection with claim 1.

Because the requisite motivation to combine or modify *Maloney* and *Rosenblatt* is lacking and since, even if the references were combined or modified, the Final Office

Action fails to show that all of the features of claim 33 would be realized, *prima facie* obviousness has not been established. As such, the § 103(a) rejection of claim 33 should be reversed. The § 103(a) rejection of claims 34-41 should be reversed as well, at least because these claims depend upon claim 33. *See, In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

11. Claims 42 and 43

The § 103(a) rejection of dependent claims 42 and 43 should be reversed for at least reasons similar to those presented above in connection with base claim 33. Furthermore, the § 103(a) rejection of claims 42 and 43 should be reversed for the following additional reasons.

Claim 42 recites, *inter alia*, “wherein the module is also configured to cause a second human image to appear to the subject through the terminal in a manner projecting an appearance that the second human image answers the at least one query.” In rejecting claim 42, the Examiner alleged that “[d]isplaying various human virtual representatives to the subject through the terminal [as allegedly disclosed by *Rosenblatt*] . . . obviously [indicates] . . . interaction with the subject.” Final Office Action at 5. The Final Office Action does not establish that *Maloney* or *Rosenblatt* teaches or suggests the “second human image” feature recited in claim 42.

Even if, as the Examiner alleged, *Rosenblatt* were to disclose “[d]isplaying various human virtual representatives,” to which Appellants do not acquiesce, the reference does not disclose or suggest displaying virtual representatives “in a manner projecting an appearance that . . . [a] second human image answers . . . at least one query” from another human image, as recited in claim 42. The cited portion of

Rosenblatt (§ 0008) merely discloses that various “levels of control over the appearance and performance of the virtual representatives may be implemented” and that a user can “choose one of a selected set of standard virtual representatives.”

Maloney also fails to disclose or suggest the “second human image” feature recited in claim 42. Although *Maloney* mentions displaying an image of the consumer, the reference does not disclose displaying the image “in a manner projecting an appearance that the . . . image answers . . . at least one query” from another human image, as recited in claim 42.

Further, the Examiner has not shown that claim 42, as a whole, would have been obvious in view of *Maloney* and *Rosenblatt*. The conjectural conclusions set forth in the Office Action that certain disclosures “obviously indicate” certain subject matter do not suffice to establish a *prima facie* conclusion of obviousness. Because the Final Office Action failed to establish that the applied art discloses or suggests all of the features of claim 42, *prima facie* obviousness has not been established.

Moreover, although claim 42 is of different scope than claim 20, the requisite motivation to combine *Maloney* and *Rosenblatt* in a manner resulting in the invention defined by claim 42 is lacking, for at least reasons similar to those presented above in connection with claim 20. As the requisite motivation is lacking, *prima facie* obviousness has not been established.

For at least the foregoing additional reasons, *prima facie* obviousness has not been established with respect to claim 42 and the § 103(a) rejection of that claim should be reversed. The § 103(a) rejection of claim 43 should also be reversed, at least

because this claim depends upon claim 42. *See, In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

VIII. Conclusion


For the reasons given above, Appellants request that the Board of Patent Appeals and Interferences reverse the Examiner's rejections of pending claims 1-48 and place this application in condition for allowance.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 3, 2005

By: 
Frank A. Italiano
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IX. Appendix A: Listing of Claims Under Rule 41.37(c)(1)(viii)

1. (Original) An electronic beauty analysis method, comprising:
maintaining beauty information in a data structure;
receiving personal information about a subject;
selecting for presentation to the subject at least some beauty information
maintained in the data structure based on the received information;
presenting to the subject an image of a virtual beauty consultant; and
causing the image of the consultant to present to the subject the beauty
information selected for presentation.
2. (Original) The method of claim 1, wherein beauty information includes
queries.
3. (Original) The method of claims 1 or 2, wherein beauty information
includes at least one of a product recommendation, a diagnostic recommendation, a
cosmetic usage recommendation, a prediction, a beauty profile, a preventative
measure, and a remedial measure.
4. (Original) The method of claim 2, further comprising recording answers
to the queries and asking the user additional queries incorporating into the additional
queries information reflective of recorded answers.

5. (Original) The method of claims 2, further comprising recording answers to the queries, and wherein causing the image of the consultant to appear as audibly presenting to the subject the beauty information includes causing the image to appear as providing at least one of a product recommendation, a diagnostic recommendation, a cosmetic usage recommendation, a prediction, a beauty profile, a preventative measure, or a remedial measure based on the recorded answers to the queries.

6. (Original) The method of claim 1, wherein maintaining beauty information involves storing the information on a storage device.

7. (Original) The method of claim 1, wherein maintaining beauty information involves providing access to a remote location where the information is maintained.

8. (Original) The method of claim 1, wherein the beauty information is stored in a data structure connected to the Internet, and wherein the method further comprises providing the subject with access to the data structure over the Internet.

9. (Original) The method of claim 2, wherein receiving personal information includes recording answers to the queries.

10. (Original) The method of claim 1, wherein receiving personal information includes obtaining the information from the subject via an audio capture device.

11. (Original) The method of claim 1, wherein receiving personal information includes obtaining the information from the subject via a user interface.

12. (Original) The method of claim 1, wherein receiving personal information includes obtaining the information from the subject via a network.

13. (Original) The method of claim 1, wherein presenting to the subject an image of a virtual beauty consultant involves causing the image to be displayed on a display device.

14. (Original) The method of claim 1, wherein presenting to the subject an image of a virtual beauty consultant involves causing a synthesized image to be displayed to the subject.

15. (Original) The method of claim 1, wherein presenting to the subject an image of a virtual beauty consultant involves causing a pre-recorded image of an actual human being to be displayed to the subject.

16. (Original) The method of claim 1, wherein presenting to the subject an image of a virtual beauty consultant involves allowing the subject to choose an image to be presented.

17. (Original) The method of claim 1, wherein presenting to the an image of a virtual beauty consultant involves selecting, from a group of virtual beauty consultants, a consultant that matches characteristics of the subject.

18. (Original) The method of claim 1, wherein presenting to the subject includes causing a synthesized human voice to be audibly projected through an audio output device.

19. (Original) The method of claim 1, wherein presenting includes causing a pre-recorded human voice to be audibly projected to the user.

20. (Original) The method of claim 1, further comprising presenting to the subject an image of a virtual user receiving the beauty information.

21. (Original) The method of claim 20, wherein the image of the virtual user is a representation of the subject.

22. (Original) An electronic beauty guidance method, comprising:
storing a series of beauty related queries in a data structure;
establishing an interface with a subject for enabling the subject to participate in
an interactive beauty analysis;
presenting to the subject a human image via a display device accessed by the
subject; and
causing the human image to appear as audibly presenting to the subject at least
one of the queries from the data structure, to thereby conduct the interactive beauty
analysis with the subject.

23. (Original) The method of claim 22, wherein the queries are stored at a
location remote from the subject, and wherein the subject is enabled to participate in the
beauty analysis from a location of the subject's choosing through access to the data
structure via a network.

24. (Original) The method of claim 22, wherein audibly presenting includes
causing a synthesized human voice to be audibly projected through the interface.

25. (Original) The method of claim 22, wherein audibly presenting includes
causing a pre-recorded human voice to be audibly projected through the interface.

26. (Original) The method of claim 22, wherein the human image is a pre-
recorded image of an actual human being.

27. (Original) The method of claim 22, wherein the human image is synthesized.
28. (Original) The method of claim 22, further comprising causing the subject to be asked personal questions, recording answers to the personal questions, and asking the subject additional questions incorporating into the additional questions information reflective of recorded answers to the personal questions.
29. (Original) The method of claim 23, wherein the queries are stored in a data structure connected to the Internet, and wherein the subject accesses the data structure over the Internet.
30. (Original) The method of claim 22 further comprising identifying to the subject at least one beauty test, storing in the data structure directions on how to conduct the beauty test, and causing the human image to appear as audibly presenting to the subject the directions from the data structure for conducting the at least one test.
31. (Original) The method of claim 22, further comprising presenting to the subject an image of a virtual user receiving the beauty information.
32. (Original) The method of claim 31, wherein the image of the virtual user is a representation of the subject.

33. (Original) An electronic beauty consulting system, the system comprising:

- a data structure for storing a series of beauty queries;
- a user terminal for enabling a subject to seek beauty advice, the terminal being linked to the data structure; and
- a module configured to cause a human image to appear to the subject through the terminal in a manner projecting an appearance that the human image asks at least one query from the data structure to the subject.

34. (Original) The system of claim 33, wherein the user terminal is remotely located with respect to the data structure.

35. (Original) The system of claim 33, wherein the module causes a synthesized human voice to be audibly projected through the terminal.

36. (Original) The system of claim 33, wherein the module causes a pre-recorded human voice to be audibly projected through the terminal.

37. (Original) The system of claim 33, wherein the module causes a pre-recorded human image to be visually projected through the terminal.

38. (Original) The system of claim 33, wherein the module causes a synthesized human image to be visually projected through the terminal.

39. (Original) The system of claim 33, wherein the data structure is a linked list.
40. (Original) The system of claim 33, wherein the data structure contains personal information queries.
41. (Original) The system of claim 40, wherein the personal information queries are presented to the subject through the terminal, responses are recorded, and information reflective of the recorded responses is incorporated into subsequent beauty queries.
42. (Original) The method of claim 33, wherein the module is also configured to cause a second human image to appear to the subject through the terminal in a manner projecting an appearance that the second human image answers the at least one query.
43. (Original) The method of claim 42, wherein the second human image is a representation of the subject.
44. (Previously presented) The method of claim 1, wherein presenting to the subject an image of a virtual beauty consultant includes automatically selecting an image of the virtual beauty consultant based on characteristics of the subject.

45. (Previously presented) The method of claim 44, wherein automatically selecting an image of the virtual beauty consultant based on characteristics of the subject includes automatically selecting an image of the virtual beauty consultant based on characteristics determined from the received personal information.

46. (Previously presented) The method of claim 44, wherein automatically selecting an image of the virtual beauty consultant based on characteristics of the subject includes automatically selecting an image of the virtual beauty consultant based on characteristics determined from habits of the subject.

47. (Previously presented) The method of claim 1, wherein presenting to the subject an image of a virtual beauty consultant includes presenting the image of the virtual beauty consultant in a customizable environment.

48. (Previously presented) The method of claim 1, further comprising presenting to the subject a personification of the subject, wherein the personification of the subject receives the selected information from the virtual beauty consultant.

X. **Appendix B: Evidence Appendix to Appeal Brief Under Rule
41.37(c)(1)(ix)**

None.

XI. Appendix C: Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)

There are currently no other appeals or interferences, of which Appellants, Appellants' legal representative, or Assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.